IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number:	10/632,620
Confirmation Number:	4750
Filing Date:	July 31, 2003
Applicant:	Christopher Norman KLINE
Entitled:	SCHEDULING AND EXECUTION OF PROGRAM JOBS IN COMPUTER SYSTEM
Examiner:	John J. ROMANO
Group Art Unit:	2192
Attorney Docket No.:	1397-8U

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

<u>APPEAL BRIEF</u>

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed August 30, 2007, and in response to the Final Office Action dated June 1, 2007, wherein Appellant appeals from the Examiner's rejection of claims 21-31. The fee for a one-month extension of time to file an Appeal Brief up to and including November 30, 2007 is being submitted concurrently.

TABLE OF CONTENTS

I. Real Party of Interest

The real party in interest is International Business Machines, which is the assignee of the subject application by virtue of assignment recorded on Reel/Frame 014371/0807 on July 31, 2003.

II. Related Appeals and Interferences

None.

III. Status of Claims

Claims 21-31 are pending in this Application. Claims 1-20 were previously cancelled. Claims 21-31 have been finally rejected, and it is from the final rejection of Claims 21-31 that this Appeal is taken.

IV. Status of Amendments

The claims have not been amended subsequent to the imposition of the Final Office Action dated June 1, 2007.

V. Summary of Claimed Subject Matter

The present invention, as recited in independent Claims 21, 25 and 29 is directed toward a method and program product for managing a change to an application, operating system, data base or other software component of a computer system, as described at least in the Summary of the Invention on Pages 2, Line 23 through Page 3, Line 11 of the Specification. Objectives of the

present invention include the automation of making configuration and other changes to computer systems, as well as automating the process of running jobs on computer systems.

With respect to independent Claim 21, a computer implemented method for managing a change to a setting of a computer program is claimed. Referring to FIGS. 5 and 6A, as described at least on Page 9, Line 12 to Page 11, Line 10 of the Specification, at one location, such as a server where the change is to be made, a user schedules execution or installation of the change (See FIG. 5, Steps 300 – 320). Subsequently, a program automatically attempts to execute or install the change as scheduled (Step 81, FIG. 6A). Then, in response to automatically attempting to change the setting, a search is automatically conducted for a key phrase or code associated with the attempt to execute or install the change to determine if the change was successful or unsuccessful (Step 88, FIG. 6A). Depending on whether or not the return code is present, a notification of success or lack of success is sent to another location, such as a pager or e-mail address of the user (Steps 89 – 91, FIG. 6A). Thus, the user does not have to be physically present at the server when the change is implemented, but will be notified whether there is a problem. According to another feature of the present invention, the key phrase or code is stored in a log associated with the application, operating system, data base or other software component.

Independent Claim 25 recites a computer program product containing program instructions on a computer readable media. Continuing to refer to FIGS. 5 and 6A, as described at least on Page 9, Line 12 to Page 11, Line 10 of the Specification, at one location, such as a server where the change is to be made, a user schedules execution or installation of the change (See FIG. 5, Steps 300 – 320). Claim 25 also includes first program instructions automatically attempt to execute or install the change as scheduled (Step 81, FIG. 6A). Then, in response to

automatically attempting to change the setting, second program instructions automatically search for a key phrase or code associated with the attempt to execute or install the change to determine if the change was successful or unsuccessful (Step 88, FIG. 6A). Depending on whether or not the return code is present, third program instructions automatically send a notification of success or lack of success to another location, such as a pager or e-mail address of the user (Steps 89 – 91, FIG. 6A).

Independent Claim 29 includes a computer program product for managing a change to a permission file, which includes multiple program instructions recorded on a computer readable media. Still referring to FIGS. 5 and 6A, as described on Page 9, Line 12 to Page 11, Line 10 of the Specification, at one location, such as a server where the change is to be made, a user schedules execution or installation of the change (See FIG. 5, Steps 300 – 320). Claim 29 includes first program instructions automatically attempting to change a permission file as scheduled (Step 81, FIG. 6A). Of note, Step 81, FIG. 6A and the description at least on Pages 9-11 generally indicate a change in a configuration file. Page 5, Lines 14-16 of the specification indicate that "examples of change files" include adjusting "application permissions," as stated in independent Claim 29. Then, in response to automatically attempting to change the permission file, second program instructions automatically query an exit status code corresponding to the attempt to execute or install the change to determine if the change was successful or unsuccessful (Step 88, FIG. 6A). Depending on whether or not the code is present, the second program instructions also include automatically sending a notification of success or lack of success to another location, such as a pager or e-mail address of the user (Steps 89 – 91, FIG. 6A).

VI.   Grounds of Rejection to be Reviewed on Appeal

1.   Claims 25-31 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

2.   Claims 21, 23-25 and 27-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's Admitted Prior Art ("APA") in view of U.S. Patent No. 7,089,561 to Morrison ("Morrison") and further in view of Hewlett Packard's "OpenView" reference ("OpenView").

3.   Claims 22 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over APA in view of Morrison and OpenView, and further in view of U.S. Patent No. 6,122,664 to Boukobza ("Boukobza").

4.   Claims 29-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over APA in view of Morrison and OpenView, and further in view of U.S. Appl. Pub. No. 2002/0166053 to Wilson ("Wilson").

VII.   Argument

<u>The Rejection of Claims 25-31 under 35 U.S.C. §101</u>

Claims 25-31 were rejected under 35 U.S.C. §101 as being directed toward non-statutory subject matter. Claims 25 and 29 are independent. For convenience of the Honorable Board in addressing the rejections, dependent Claims 26-28 stand or fall together with independent Claim 25 and dependent Claims 30-31 stand or fall together with independent Claim 29.

On page 3 of the Final Office Action, the Examiner incorrectly asserts that, with respect to independent Claims 25 and 29, the claim limitations are "directed towards software per se, and

not a product of manufacture." However, both independent Claim 25 and Claim 29 recite a computer program product, comprising in part *"a computer readable media...*wherein said...program instructions are recorded on said media," (emphasis added). A computer readable media having functional program instructions recorded thereon is clearly a product of manufacture, contrary to the Examiner's statement.

Moreover, MPEP §2106.1 states "[d]escriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and *computer programs which impart functionality* when employed as a computer component." Claims 25 and 29 recite a computer program product for managing changes or setting of a computer file or program, which clearly imparts functionality. In addition, "[w]hen functional descriptive material *is recorded on some computer-readable medium*, it becomes structurally and functionally interrelated to the medium and will be statutory," (MPEP §2106.1)(emphasis added). As stated above, Claims 25 and 29 explicitly recite *"a computer readable media"* having recorded instructions. Accordingly, independent Claims 25 and 29 are indeed directed toward statutory subject matter in compliance with 35 U.S.C. §101, and the Examiner's rejection should be reversed with respect to Claims 25-31.

The Rejection of Claims 21, 23-25 and 27-28 under 35 U.S.C. §103(a)

Claims 21, 23-25 and 27-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's Admitted Prior Art ("APA") in view of U.S. Patent No. 7,089,561 to Morrison ("Morrison") and further in view of Hewlett Packards' "OpenView" reference ("OpenView). Claims 21 and 25 are independent. For convenience of the Honorable Board in addressing the

rejections, dependent Claims 23-24 stand or fall together with independent Claim 21 and dependent Claims 27-28 stand or fall together with independent Claim 25.

    A.   <u>The Examiner fails to cite a reference or combination of references disclosing each and every element of Applicants' Claimed Invention</u>

Independent Claim 21 recites, in part, "automatically attempting to change a setting of a computer program, and... *in response* to the step of automatically attempting to change said setting of said computer program, *automatically searching* said log file," (emphasis added). Similarly, independent Claim 25 recites, in part, "first program instructions to automatically attempt to change a setting of a computer program; and... second program instructions, *responsive to* said first program instructions automatically attempting to change said setting of said computer program, to *automatically search* a log file," (emphasis added).

Primarily, the Examiner has mischaracterized portions of Applicant's disclosure as "Applicant's Admitted Prior Art." Specifically, on Page 4 of the Office Action, the Examiner cited to Applicant's "Background of the Invention," lines 18-19, as disclosing "searching said log file." However, the relevant portion of Applicant's "Background" recites:

> "Systems administrators are often required to make configuration and other changes to computer systems... Heretofore, the systems administrators have made such changes by *manually entering commands* or initiating scripts in real time to implement the changes...The systems administrator then made a change to the application instance, either manually or via a prepared script, and *verified that the change was made successfully by manually checking the output* of the change and searching for certain codes and phrases in output," (Published Application, Paragraph [0002]) (emphasis added).

As clearly stated, Applicant's Background section discloses *manually* checking for the presence of an output after *manually* entering commands to initiate a change in a computer program. Independent Claim 21 recites "*automatically searching*" a log file "*in response* to the

step of automatically attempting to change said setting." Claim 25 includes instructions to *"automatically search"* a log file *"responsive to* said first program instructions." These characteristics are not admitted prior art by the Applicant as evidenced above, and indeed, it is improper to mischaracterize Applicant's background disclosure as admitting such features of Claims 21 and 25 as prior art. Furthermore, the Examiner failed to cite any portion of the Morrison or OpenView references as disclosing the features of either *"automatically searching"* a log file *"in response* to the step of automatically attempting to change said setting" or instructions to *"automatically search"* a log file *"responsive to* said first program instructions," and Applicant agrees that neither the Morrison nor the OpenView references make any such disclosure.

Accordingly, the cited APA, Morrison, and/or OpenView references, whether considered alone or in combination, fail to disclose "automatically attempting to change a setting of a computer program, and... *in response* to the step of automatically attempting to change said setting of said computer program, *automatically searching* said log file," (emphasis added) or "second program instructions, *responsive to* said first program instructions automatically attempting to change said setting of said computer program, to *automatically search* a log file," (emphasis added) as stated in Applicant's independent Claims 21 and 25, respectively, and the rejection by the Examiner should be reversed for at least this reason.

Independent Claim 21 also recites, in part, "automatically attempting to *change a setting of a computer program*, and if said *setting* of said computer program is successfully changed, said computer program writing a predetermined return code to a log file, if said *setting* of said computer program is not successfully changed, said computer program not writing said return

7

code to said log file," (emphasis added). Similarly, Claim 25 recites, "first program instructions to automatically attempt to *change a setting of a computer program*," (emphasis added).

On Page 4 of the Office Action, the Examiner recognizes that this claimed feature is not disclosed in APA, but the Examiner asserts that Morrison does provide such disclosure. In particular, the Examiner asserts Col. 13 of Morrison provides "return codes indicating success is taught if change is successful, otherwise a Win32 error." Contrary to the Examiner's position, Morrison fails to disclose the claimed features in the cited passage and anywhere else in the reference for that matter. In particular, Morrison discloses *sending a signal* to terminate a process and a receipt of that signal (See Col. 12, Line 35-Col. 13: Line 35). Specifically, Morrison discloses a "Return Value" of "ERROR_SUCCESS if the *signal is successfully sent*, else Win32 error," (Col. 13: lines 10-11)(emphasis added). Sending and receiving *a signal* to terminate a process, and any associated return value, is wholly unrelated to Applicant's claimed "changing a *setting* of a computer program." Simply stated, *sending* a signal does not equate to *changing* a setting of a computer program. As such, Morrison fails to disclose any return value associated with a change in a setting of a computer program. In addition, the OpenView reference was not cited as disclosing this feature of Applicant's claims, and indeed, OpenView fails to make such disclosure.

Accordingly, APA, Morrison, and/or OpenView, whether considered alone or in combination, fail to disclose "automatically attempting to *change a setting of a computer program*, and if said *setting* of said computer program is successfully changed, said computer program writing a predetermined return code to a log file, if said *setting* of said computer program is not successfully changed, said computer program not writing said return code to said log file," (emphasis added) or "first program instructions to automatically attempt to *change a*

8

setting of a computer program," (emphasis added) as stated in Applicant's independent Claims 21 and 25, respectively, and the rejection by the Examiner should be reversed for at least this reason.

Concluding, the Examiner has failed cite a combination of references disclosing each and every element of Applicant's claims as required for a *prima facie* case of obviousness. Accordingly, the Examiner's rejection with respect to Claims 21, 23-25 and 27-28 should be reversed.

The Rejection of Claims 22 and 26 under 35 U.S.C. §103(a)

For convenience of the Honorable Board in addressing the rejections, dependent Claims 22 and 26 stand or fall together with independent Claims 21 and 25, respectively. Reference is made to the arguments in favor of the patentability of independent Claims 21 and 25 provided above.

The Rejection of Claims 29-31 under 35 U.S.C. §103(a)

Claims 29-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over APA in view of Morrison and OpenView, and further in view of U.S. Appl. Pub. No. 2002/0166053 to Wilson ("Wilson"). For convenience of the Honorable Board in addressing the rejections, dependent Claims 30-31 stand or fall together with independent Claim 29.

A.   The Examiner fails to cite a reference or combination of references disclosing each and every element of Applicants' Claimed Invention

Independent Claim 29 recites, in part, "first program instructions to automatically attempt to *change* a permission file, said permission file indicating which User IDs have access to which other files, and second program instructions, *responsive to the attempt to change* said permission file, *to automatically query* an exit status code corresponding to said attempt to change said permission file," (emphasis added). None of the myriad references cited in the Office Action teach the above-recited feature of Claim 29. The Examiner asserts that APA, Morrison and OpenView disclose all the claimed features as described for independent Claims 21 and 25, except for a "permission file indicating which User IDs have access...," which is asserted by the Examiner as being taught by Wilson (Office Action, Page 8).

However, as discussed above with respect to Claims 21 and 25, the APA discloses the prior art required *manually* checking for the presence of an output after *manually* entering commands to initiate a change in a computer program rather than "*automatically* searching" or *automatically* "querying" a log file *in response* to the automatically attempting to change or changing a setting or permission file as claimed. As further discussed with respect to Claims 21 and 25, Morrison discloses a "Return Value" of "ERROR_SUCCESS if the *signal is successfully sent*, else Win32 error," (Col. 13: lines 10-11)(emphasis added), and *sending* a signal does not equate to *changing* a setting of a computer program, let alone attempting to change a permission file, as stated in Claim 29.

Furthermore, Wilson was not cited for the above described shortcomings of the APA, Morrison, and OpenView references' failure to disclose "first program instructions to automatically attempt to change a permission file...and second program instructions, responsive to the attempt to change said permission file, to automatically query an exit status code corresponding to said attempt to change said permission file," as stated in Applicants' Claim 29.

10

As such, the addition of Wilson to the combination of APA, Morrison and/or OpenView fails to remedy the deficiencies in the Examiner's rejection, as discussed above with respect to Claims 21 and 25.

In sum, the Examiner has failed cite a combination of references disclosing each and every element of Applicant's claims as required for a *prima facie* case of obviousness. Accordingly, the Examiner's rejection with respect to Claims 29-31 should be reversed.

VIII. Conclusion

For the reasons provided above as well as provided in the record, the claim rejections are believed to be improper and a result of clear error by the Examiner. Accordingly, pending Claims 21-31 are believed to be in condition for allowance, and a reversal of the Examiner's rejections is respectfully requested.

The Commissioner is hereby authorized to credit overpayments or charge payment of any additional fees associated with this communication to Deposit Account No. 090457.

Respectfully submitted,

Date: November 19, 2007   By: /Alan M. Weisberg/

Alan M. Weisberg
Reg. No.: 43,982
Attorney for Applicant(s)
Christopher & Weisberg, P.A.
200 East Las Olas Boulevard, Suite 2040
Fort Lauderdale, Florida 33301
Customer No. 68786
Tel: (954) 828-1488
Fax: (954) 828-9122
email: ptomail@cwiplaw.com

89414

APPENDIX A: CLAIMS ON APPEAL

21.   A computer implemented method for managing a change to a setting of a computer program of a computer system, said method comprising the steps of:

automatically attempting to change a setting of a computer program, and

if said setting of said computer program is successfully changed, said computer program writing a predetermined return code to a log file,

if said setting of said computer program is not successfully changed, said computer program not writing said return code to said log file, and

in response to the step of automatically attempting to change said setting of said computer program, automatically searching said log file for said return code, and

if said log file contains said return code, automatically sending a notification that said setting of said computer program was successfully changed, and

if said log file does not contain said return code, automatically sending a notification that said setting of said computer program was not successfully changed.

22.   A computer implemented method as set forth in claim 21 wherein said setting is a number of messages that can reside on a queue used by said computer program.

23.   A computer implemented method as set forth in claim 21 wherein said notification indicating whether said setting of said computer program was successfully changed is sent to an administrator.

24. A computer implemented method as set forth in claim 21 wherein said return code is a response to a command to change said setting.

25. A computer program product for managing a change to a setting of a computer program of a computer system, said computer program product comprising:

a computer readable media;

first program instructions to automatically attempt to change a setting of a computer program; and

if said setting of said computer program is successfully changed, said computer program writing a predetermined return code to a log file,

if said setting of said computer program is not successfully changed, said computer program not writing said return code to said log file, and

second program instructions, responsive to said first program instructions automatically attempting to change said setting of said computer program, to automatically search a log file for said return code indicative of a successful change to said setting; and

third program instructions responsive to said log file containing said return code, to automatically send a notification that said setting of said computer program was successfully changed, and responsive to said log file not containing said return code, to automatically send a notification that said setting of said computer program was not successfully changed; and wherein

said first, second and third program instructions are recorded on said media.

26. A computer program product as set forth in claim 25 wherein said setting is a number of messages that can reside on a queue used by said computer program.

B

27.   A computer program product as set forth in claim 25 wherein said third program instructions send to an administrator said notification indicating whether said setting of said computer program was successfully changed.

28.   A computer implemented method as set forth in claim 25 wherein said return code is a response to a command to change said setting.

29.   A computer program product for managing a change to a permission file in a computer system, said permission file indicating which User IDs have access to which other files, said computer program product comprising:

        a computer readable media;

        first program instructions to automatically attempt to change a permission file, said permission file indicating which User IDs have access to which other files, and

        second program instructions, responsive to the attempt to change said permission file, to automatically query an exit status code corresponding to said attempt to change said permission file, to determine whether said attempt to change said permission file was successful, and automatically send a notification indicating whether said attempt to change said permission file was successful; and wherein
        said first and second program instructions are recorded on said computer readable media.

30.   A computer program product as set forth in claim 29 wherein said permission file is part of an operating system.

31.   A computer program product as set forth in claim 29 wherein said second program instructions send to an administrator said notification indicating whether said attempt to change said permission file was successful.

C

APPENDIX B: EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellant in this Appeal, and thus no evidence is attached hereto.

APPENDIX C: RELATED PROCEEDINGS APPENDIX

Since Appellant is unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.